



February 20, 2007

HOUSE BILL No. 1573

DIGEST OF HB 1573 (Updated February 19, 2007 12:31 pm - DI 97)

Citations Affected: IC 27-1.

Synopsis: Unauthorized alien insurers in Indiana. Provides for the entry of an unauthorized alien insurance company to transact business in the United States through a United States branch that is granted a certificate of authority in Indiana to transact insurance business as if the United States branch were a domestic insurance company. Specifies requirements that a United States branch must meet to be granted and to obtain renewal of the certificate of authority.

Effective: July 1, 2007.

Fry, Ripley

January 23, 2007, read first time and referred to Committee on Insurance.
February 19, 2007, amended, reported — Do Pass.

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HB 1573—LS 7717/DI 97+



February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1573

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-1-40 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]:

4 **Chapter 40. Entry of Unauthorized Alien Companies**

5 **Sec. 1. As used in this chapter, "trusteed surplus" means the**
6 **aggregate value of a United States branch's:**

7 (1) **surplus and reserve funds required under IC 27-1-6; and**

8 (2) **trust assets described in section 5 of this chapter;**

9 **plus investment income accrued on the items described in**
10 **subdivisions (1) and (2) if the investment income is collected by the**
11 **state for the trustees, less the aggregate net amount of all of the**
12 **United States branch's reserves and other liabilities in the United**
13 **States, as determined under section 6 of this chapter.**

14 **Sec. 2. As used in this chapter, "United States branch" means:**

15 (1) **an entity that is considered, for purposes of this chapter,**
16 **to be a domestic company through which insurance business**
17 **is transacted in the United States by an alien company; and**

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(2) the alien company's assets and liabilities that are attributable to the insurance business transacted in the United States.

Sec. 3. Indiana may serve as a state of entry to enable an alien company to transact insurance business in the United States through a United States branch if the United States branch:

(1) qualifies under IC 27 for a certificate of authority as if the United States branch were a domestic company organized under IC 27; and

(2) establishes a trust account that meets the following conditions:

(A) The trust account is established under a trust agreement approved by the commissioner with a United States bank.

(B) The amount in the trust account is at least equal to:

(i) the minimum capital and surplus requirements; or

(ii) the authorized control level risk based capital requirements;

whichever is greater, that apply to a domestic company that possesses a certificate of authority to transact the same kind of insurance business in Indiana as the United States branch will transact.

Sec. 4. (a) A trust account established under section 3(2) of this chapter must contain, at all times, an amount equal to the United States branch's reserves and other liabilities, plus the:

(1) minimum capital and surplus requirement; or

(2) authorized control level risk based capital requirement;

whichever is greater, that applies to a domestic company granted a certificate of authority under IC 27 to transact the same kind of insurance business as the United States branch transacts.

(b) One (1) or more trustees must be appointed to administer the trust.

(c) A trust agreement for a trust account established under section 3(2) of this chapter, and amendments to the trust agreement:

(1) must be authenticated in a manner prescribed by the commissioner; and

(2) are effective only when approved by the commissioner after the commissioner finds all of the following:

(A) The trust agreement and amendments are sufficient in form and in conformity with law.

(B) All trustees appointed under subsection (b) are eligible

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1 to serve as trustees.

2 (C) The trust agreement is adequate to protect the interests
3 of the beneficiaries of the trust.

4 (d) The commissioner may withdraw an approval granted under
5 subsection (c)(2) if, after notice and hearing, the commissioner
6 determines that one (1) or more of the conditions required under
7 subsection (c)(2) for approval no longer exist.

8 (e) The commissioner may approve modifications of, or
9 variations in, a trust agreement under subsection (c) if the
10 modifications or variations are not prejudicial to the interests of
11 Indiana residents, United States policyholders, and creditors of the
12 United States branch.

13 (f) A trust agreement for a trust account established under
14 section 3(2) of this chapter must contain provisions that:

15 (1) vest legal title to trust assets in the trustees and lawfully
16 appointed successors of the trustees;

17 (2) require that all assets deposited in the trust account be
18 continuously kept in the United States;

19 (3) provide for appointment of a new trustee in case of a
20 vacancy, subject to the approval of the commissioner;

21 (4) require that the trustees continuously maintain a record
22 sufficient to identify the assets of the trust account;

23 (5) require that the trust assets consist of:

24 (A) cash;

25 (B) investments of the same kind as the investments in
26 which funds of a domestic company may be invested; and

27 (C) interest accrued on the cash and investments specified
28 in clauses (A) and (B), if collectable by the trustees;

29 (6) establish that the trust:

30 (A) is for the exclusive benefit, security, and protection of:

31 (i) United States policyholders of the United States
32 branch; and

33 (ii) United States creditors of the United States branch
34 after all obligations to policyholders are paid; and

35 (B) shall be maintained as long as any liability of the
36 United States branch arising out of the United States
37 branch's insurance transactions in the United States is
38 outstanding;

39 (7) establish that trust assets, other than income as specified
40 in subsection (g), may not be withdrawn or permitted by the
41 trustees to be withdrawn without the approval of the
42 commissioner, except for any of the following purposes:

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(A) To make deposits required by the law of any state for the security or benefit of all policyholders of the United States branch in the United States.

(B) To substitute other assets permitted by law and at least equal in value and quality to the assets withdrawn, upon the specific written direction of the United States manager of the United States branch when the United States manager is empowered and acting under general or specific written authority previously granted or delegated by the alien company's board of directors.

(C) To transfer the assets to an official liquidator or rehabilitator under a court order.

(g) A trust agreement for a trust account established under section 3(2) of this chapter may provide that income, earnings, dividends, or interest accumulations of the trust assets may be paid over to the United States manager of the United States branch upon request of the United States manager if the total amount of trust assets following the payment to the United States manager is not less than the amount required under subsection (a).

(h) A trust agreement for a trust account established under section 3(2) of this chapter may provide that written approval of the insurance supervising official of another state in which:

(1) trust assets are deposited; and

(2) the United States branch is authorized to transact insurance business;

is sufficient, and approval of the commissioner is not required, for withdrawal of the trust assets in the other state if the amount of total trust assets after the withdrawal will not be less than the amount required under subsection (a). However, the United States branch shall provide written notice to the commissioner of the nature and extent of the withdrawal.

(i) The commissioner may at any time:

(1) make examinations of the trust assets of a United States branch that holds a certificate of authority under this chapter at the expense of the United States branch; and

(2) require the trustees to file a statement, on a form prescribed by the commissioner, certifying the assets of the trust account and the amounts of the assets.

(j) Refusal or neglect of a trustee to comply with this section is grounds for:

(1) the revocation of the United States branch's certificate of authority; or

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(2) the liquidation of the United States branch.

Sec. 5. (a) The commissioner shall require a United States branch to do the following before granting the United States branch a certificate of authority to transact insurance business as described in section 3(1) of this chapter:

(1) Comply with this chapter and any other requirement of IC 27.

(2) Submit the following:

(A) A copy of the current charter and bylaws of the alien company that intends to transact business through the United States branch and any other documents determined by the commissioner to be necessary to provide evidence of the kinds of insurance business that the alien company is authorized to transact. Documents submitted under this clause must be attested to as accurate by the insurance supervisory official in the alien company's domiciliary jurisdiction.

(B) A full statement, subscribed and affirmed as true under penalty of perjury by two (2) officers or equivalent responsible representatives of the alien company in a manner prescribed by the commissioner, of the alien company's financial condition as of the close of the alien company's latest fiscal year, showing the alien company's:

(i) assets;

(ii) liabilities;

(iii) income disbursements;

(iv) business transacted; and

(v) other facts required to be shown in the alien company's annual statement reported to the insurance supervisory official in the alien company's domiciliary jurisdiction.

(C) An English translation, if necessary, of any document submitted under this subdivision.

(3) Submit to an examination of the affairs of the alien company that intends to transact business through the United States branch at the alien company's principal office in the United States. However, the commissioner may accept a report of the insurance supervisory official in the alien company's domiciliary jurisdiction in lieu of the examination required under this subdivision.

(b) The commissioner may at any time hire, at a United States branch's expense, any independent experts that the commissioner

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1 considers necessary to implement this chapter with respect to the
2 United States branch.

3 Sec. 6. (a) A United States branch shall file with the
4 commissioner, not later than March 1, May 15, August 15, and
5 November 15 of each year, all of the following:

6 (1) Statements of the insurance business transacted in the
7 United States, the assets held by or for the United States
8 branch in the United States for the protection of policyholders
9 and creditors in the United States, and the liabilities incurred
10 against the assets. All of the following apply to the statements
11 filed under this subdivision:

12 (A) The statements must contain information concerning
13 only the United States branch's assets and insurance
14 business in the United States.

15 (B) The statements must be in the same form as statements
16 required of a domestic company that possesses a certificate
17 of authority to transact the same kinds of insurance
18 business as the United States branch transacts.

19 (C) The statements must be filed as follows:

20 (i) Quarterly statements filed not later than May 15,
21 August 15, and November 15 of each year for the first
22 three (3) quarters of the calendar year.

23 (ii) An annual statement, filed not later than March 1 of
24 each year.

25 (2) A trusted surplus statement, in a form prescribed by the
26 commissioner, at the end of the period covered by each
27 statement described in subdivision (1)(C). In determining the
28 net amount of the United States branch's liabilities in the
29 United States to be reported in the statement of trusted
30 surplus, the United States branch shall make adjustments to
31 total liabilities reported on the accompanying annual or
32 quarterly statement as follows:

33 (A) Add back liabilities used to offset admitted assets
34 reported in the accompanying quarterly or annual
35 statement.

36 (B) Deduct:

37 (i) unearned premiums on insurance producer balances
38 or uncollected premiums that are not more than ninety
39 (90) days past due;

40 (ii) losses reinsured by reinsurers authorized to do
41 business in Indiana, less unpaid reinsurance premiums
42 to be paid to the authorized reinsurers;

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(iii) reinsurance recoverables on paid losses from reinsurers not authorized to do business in Indiana that are included as an asset in the annual statement, but only to the extent that a liability for the unauthorized recoverables is included in the liabilities report in the trusted surplus statement;

(iv) special state deposits held for the exclusive benefit of policyholders of a particular state that do not exceed net liabilities reports for the particular state;

(v) secured accrued retrospective premiums;

(vi) if the alien company transacting business through the United States branch is a life insurer, the amount of the alien company's policy loans to policyholders in the United States, not exceeding the amount of legal reserve required on each policy, and the net amount of uncollected and deferred premiums; and

(vii) any other nontrust asset that the commissioner determines secures liabilities in a manner substantially similar to the manner in which liabilities are secured by the unearned premiums, losses reinsured, reinsurance recoverables, special state deposits, secured accrued retrospective premiums, and policy loans referred to in items (i) through (vi).

(3) Any additional information that relates to the business or assets of the alien company and is required by the commissioner.

(b) The annual statement and trusted surplus statement described in subsection (a) must be signed and verified by the United States manager, the attorney in fact, or an empowered assistant United States manager, of the United States branch. Items of securities and other property held under a trust agreement must be certified in the trusted surplus statement by the United States trustees.

(c) Each report concerning an examination of a United States branch conducted under section 4(i) of this chapter must include a trusted surplus statement as of the date of examination and a general statement of the financial condition of the United States branch.

Sec. 7. (a) Before issuing a new or renewal certificate of authority to a United States branch, the commissioner may require satisfactory proof:

(1) in the charter of the alien company transacting business

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through the United States branch;

(2) by an agreement evidenced by a certified resolution of the alien company's board of directors; or

(3) otherwise as required by the commissioner;

that the United States branch will not engage in any insurance business not authorized by this chapter and by the alien company's charter.

(b) The commissioner shall issue a renewal certificate of authority to a United States branch if the commissioner is satisfied that the United States branch is not delinquent in any requirement of this title and that the United States branch's continued insurance business in Indiana is not contrary to the best interest of the citizens of Indiana.

(c) A United States branch may not be:

(1) granted a certificate of authority to transact any kind of insurance business in Indiana that is not permitted to be transacted in Indiana by a domestic company granted a certificate of authority under IC 27; or

(2) authorized to transact an insurance business in Indiana if the United States branch transacts, anywhere in the United States, any kind of business other than an insurance business and business incidental to the kind of insurance business that the United States branch is authorized to transact in Indiana.

(d) A United States branch entering the United States through Indiana or another state may not be authorized to transact an insurance business in Indiana if the United States branch fails to substantially comply with any requirement of this title that:

(1) applies to a similar domestic company that is organized after July 1, 2007; and

(2) the commissioner determines is necessary to protect the interest of the policyholders.

(e) Unless the commissioner determines that the kind of insurance is not contrary to the best interest of the citizens of Indiana, a United States branch may not transact any kind of insurance business that is not permitted to be transacted in Indiana by a similar domestic company that is organized after July 1, 2007.

(f) A United States branch may not be authorized to transact an insurance business in Indiana unless the United States branch maintains correct and complete records of the United States branch's transactions that are:

(1) open to inspection by any person who has the right to inspect the records; and

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1 (2) maintained at the United States branch's principal office
2 in Indiana.

3 Sec. 8. If the commissioner determines from a quarterly or
4 annual statement, trusted surplus statement, or another report
5 that a United States branch's trusted surplus is less than:

6 (1) the minimum capital and surplus requirements; or

7 (2) the authorized control level risk based capital
8 requirements;

9 whichever is greater, that apply to a domestic insurer granted a
10 certificate of authority to transact the same kind of insurance
11 business in Indiana, the commissioner may proceed under IC 27-9
12 against the United States branch as if the United States branch
13 were an insurer in such condition that further transaction by the
14 insurer of insurance business in United States would be hazardous
15 to the insurer's policyholders, creditors, or residents of the United
16 States.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1573, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 8, line 11, delete "this chapter" and insert "**this title**".

Page 8, line 27, delete "this chapter" and insert "**this title**".

and when so amended that said bill do pass.

(Reference is to HB 1573 as introduced.)

FRY, Chair

Committee Vote: yeas 7, nays 0.

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